

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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FERNANDO HERNANDEZ, KENNETH CHOW,
BRIAN WHITE, DAVID WILLIAMS,
MARQUIS ACKLIN, CECILIA JACKSON,
TERESA JACKSON, MICHAEL LATTIMORE
and JUANY GUZMAN, Each Individually, And On Behalf Of
All Other Persons Similarly Situated,

Plaintiffs,

-against-

THE FRESH DIET INC.,
SYED HUSSAIN, Individually,
JUDAH SCHLOSS, Individually,
and ZAIMI DUCHMAN, Individually

Defendants.
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**AFFIDAVIT OF
PLAINTIFF JUANY
GUZMAN IN
SUPPORT OF
MOTION FOR
INJUNCTIVE
RELIEF RE:
RETALIATION**

JUANY GUZMAN declares, subject to the penalties for perjury, that the following is true and correct:

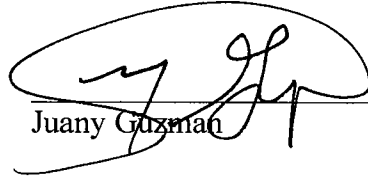
1. I submit this affidavit in support of my motion for injunctive relief against the Defendants regarding their acts of retaliation against me.
2. I am presently 25 years old.
3. I live at 3760 Notch Street, Macungie, PA 18062.
4. In January 2012, I was looking for work and a personal friend of mine, Fernando Hernandez, advised me that there might be an employment opportunity as a driver/food delivery person for a company called The Fresh Diet, Inc. Mr. Hernandez himself worked for The Fresh Diet, Inc. as a driver.
5. At that time, I went to The Fresh Diet, Inc.'s facilities in Brooklyn, New York and met with delivery manager Syed Hussain. I told Mr. Hussain that I was looking for a job.
6. Syed Hussain told me that he was interested in me but that I first had to fill out a written application for employment with The Fresh Diet, Inc. I did so.
7. About a week after submitting my application, I was advised that I had been hired by The Fresh Diet, Inc. as a driver/food delivery person.

8. As soon as I was hired by The Fresh Diet, Inc., I began working full-time as a driver/food delivery employee, reporting directly to delivery manager Syed Hussain.
9. At that time, Syed Hussain told me that he needed me for a particular position within the company's regional food delivery system. Syed Hussain stated that he was assigning me a specific route, called "Route P." "Route P" included customer locations in Lower Manhattan, specifically the City Hall and Chambers Street areas.
10. Throughout the first half of 2012, from January to approximately early June, I handled "Route P" on a full-time basis and delivered meals to The Fresh Diet Inc.'s customers in Lower Manhattan.
11. During this time, I typically worked six days a week.
12. During this time, I typically worked eight to ten hours a day, and sometimes up to twelve hours a day.
13. During this time, that is from January to early June 2012, I typically made about \$800 per week. My work, specifically my "Route P" assignment delivering meals to The Fresh Diet, Inc.'s customers in Lower Manhattan, and my earnings were steady and predictable.
14. At all times during my employment with The Fresh Diet, Inc., I regarded Syed Hussain as my manager and supervisor. I reported either to him or to persons under his direct supervision each day that I worked for The Fresh Diet, Inc.
15. My objective in approaching The Fresh Diet, Inc. in January 2012 was to obtain and maintain full-time employment in order to support myself and my family, including my two-year old son.
16. At no point during the course of my employment did I ever advise Syed Hussain or anyone else that I desired less than full-time employment.
17. I needed to work full-time during this period in order to support myself and my family.
18. Throughout this entire period, from January up to early June 2012, I regarded myself as a full-time employee of The Fresh Diet, Inc. If someone had asked me what my job was, or what I did for a living, I would have replied that I worked full-time for The Fresh Diet, Inc. as a driver/food delivery person.
19. Once I began working for The Fresh Diet, Inc. on a full-time basis in January 2012, I did not pursue other employment opportunities, since I regarded myself as being employed full-time by The Fresh Diet, Inc.
20. I would not have been able to support myself and my family by working a part-time schedule.
21. One day in late May 2012, after I had completed my deliveries on "Route P" and had returned to The Fresh Diet, Inc.'s facility in Brooklyn before going home, I ran into Syed Hussain and told him "Syed, have a nice weekend." Mr. Hussain then asked me to sit down because he wanted to discuss something with me.

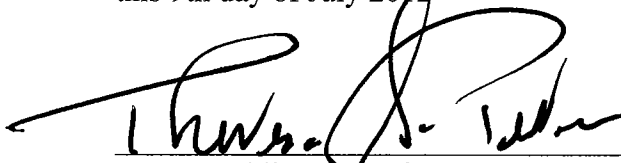
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- 22. When I sat down, Syed Hussain asked me if I had heard anything about a lawsuit that Fernando Hernandez was planning to bring against The Fresh Diet, Inc. Mr. Hussain specifically asked me whether Fernando Hernandez was trying to get other drivers to participate in a lawsuit against the company. I told Mr. Hussain that I did not know anything about any potential lawsuit. I then left the facility and went home.
- 23. In late May or early June of 2012, I decided to participate in a lawsuit against The Fresh Diet, Inc. regarding the terms and conditions of my employment. I was one of several employees who decided to participate in a lawsuit.
- 24. I understand that the complaint in this action, in which I am a named Plaintiff, was filed in the United States District Court for the Southern District of New York during the first week of June 2012, and was served on The Fresh Diet, Inc., Syed Hussain, and the other Defendants in the following days.
- 25. Sometime in early June 2012, after the complaint had been filed, Syed Hussain's assistant, Owen Dacres, whom I knew simply as Owen, approached me and told me, "hey, someone from a lawyer's office was here," trying to serve a lawsuit on the company and Syed Hussain.
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- 26. Owen Dacres told me that my name was on the lawsuit, along with Fernando Hernandez's and those of several other persons whom he declined to identify. He asked me if I knew anything about this. I then told Mr. Dacres that I was participating in a lawsuit against The Fresh Diet, Inc. and that my name indeed was on the caption of the complaint that had just been filed.
- 27. Immediately after this incident, Syed Hussain took "Route P" away from me and began drastically altering my daily assignments.
- 28. Specifically, Syed Hussain began assigning me to routes that I had never covered before, such as routes in Queens, Brooklyn, and Long Island. These were much more difficult assignments because they covered much larger geographical areas. Some customer locations were ten or more miles apart, and in some instances up to twenty miles apart. It took much longer to service these routes simply because it took much longer to get from one customer to another.
- 29. Syed Hussain assigned "Route P" to a new employee, a woman whose last name is Salazar.
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- 30. It is my understanding that Ms. Salazar began working for the Fresh Diet in only May or June of 2012, several months after I had been hired and been assigned to cover "Route P".
- 31. After the early June 2012 incident involving Owen, in which I acknowledged that I was a named plaintiff in this action, Syed Hussein told me on several occasions that "you don't have a route," and "I [Syed Hussain] don't have a route for you."
- 32. In fact, The Fresh Diet, Inc. has not given me any work at all since June 26, 2012.

33. Since early June 2012, on those occasions when Syed Hussain has offered me work, the actual daily assignments or routes have varied widely, and are no longer steady and predictable. This is a dramatic change from the stable "Route P" assignment in Lower Manhattan that I previously handled on full-time basis.
34. Several days after the initial incident involving Syed Hussein's assistant Owen Dacres described in paragraph 26, I approached Mr. Dacres to discuss an issue that I was having with my new assignments.
35. I told Owen Dacres that because I now was covering completely different, and much larger, geographic areas, I was using much more gasoline, and did not have enough money to buy gasoline for the week. Mr. Dacres gave me the company's gasoline card and told me to use it to buy the gasoline that I needed for the week.
36. At that time, Owen Dacres told me, "Juany, we [Syed and I] thought that you were cool with us and the company, and we were planning to expand your 'Route P' or give you even better routes so that you could earn more money, but now since your name is on the complaint, we can't do this for you."
37. In that same conversation, Owen Dacres told me that I should have found a way to stay out of the lawsuit. He stated that while he sympathized with me on a personal level because he also had a family to support, there was nothing he could do to help me since I now was involved in a lawsuit against The Fresh Diet, Inc. He told me not to mention to anyone that he had even discussed this matter with me.
38. Since early June 2012, my earnings have drastically declined and I now typically make approximately \$400 per week or less, instead of \$800. In fact, I have not worked at The Fresh Diet, Inc. at all since June 26, 2012.
39. I have remained available for full-time work since early June 2012 and desire and need to work full-time.
40. I never told Syed Hussain or anyone else that I wanted my schedule reduced or that I was no longer interested in working full-time.
41. I never expressed any dissatisfaction with my "Route P" assignment and never requested it be changed.
42. It is impossible for me to support myself and my family at my current rate of earnings of approximately \$400 per week or less. In fact, I have not had any earnings from The Fresh Diet, Inc. since June 26, 2012, which was the last time I had a work assignment.
43. I believe that my manager Syed Hussain took away my steady "Route P", reassigned it to a new employee, and began offering me only sporadic and much less desirable assignments in other locations, in order to retaliate against me for participating in a lawsuit against The Fresh Diet, Inc. and Syed Hussain.
44. As stated above, June 26, 2012, was the last time that I performed any work for The Fresh Diet, Inc.

45. Since June 26, 2012, I have regularly sent Syed Hussein text messages asking for work and he has ignored me or replied that he "does not have any route(s)" for me.
46. I now consider myself to be unemployed, whereas prior to early June 2012, I considered myself to be a full-time employee of The Fresh Diet, Inc. with a stable and predictable work assignment.
47. I recently have filed a claim for unemployment insurance benefits since I have had no work since June 26, 2012.


Juany Guzman

Subscribed and sworn to before me
this 9th day of July 2012


Notary Public, State of New York

THERESA S. PETERS
Notary Public, State of New York
No. 03-4882379
Qualified in Bronx County
Commission Expires Jan. 5, 2015